

08 FEB 2008



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In re Application of :
KLEMENS :
Application No.: 10/576,637 :
PCT No.: PCT/EP04/52478 : DECISION ON PETITION
Int. Filing Date: 08 October 2004 :
Priority Date: 23 October 2003 : UNDER 37 CFR 1.137(b)
Atty. Docket No.: 113642-068 :
For: STRAP TENSIONER AND ASSOCIATED :
GRIPPING JAWS :
:

This decision is in response to applicant's petition to revive under 37 CFR 1.137(b) filed 05 February 2008 in the above-captioned application. The petition is hereby **DISMISSED** as follows:

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c). It is noted that item (4) does not apply to the present application.

With respect to item (1), applicant has provided payment of the full U.S. Basic National Fee thereby satisfying item 1.

With respect to item (2), applicant has paid the required petition fee. Item (2) is therefore satisfied.

With respect to item (3), the petition includes the required statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. However, the statement of unintentional delay was executed by an attorney who was not of record at the time the application became abandoned. Present counsel further states, "Applicant respectfully submits that the abandonment of this application was unintentional in view of the fact that Applicant expected and relied upon Applicant's former patent counsel to provide such fee, and the lack of the payment of such fee only recently came to Applicant's attention. Under these circumstances, it is not apparent that the person signing the statement of unintentional delay is in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue.

The statement in the present petition is sufficient to conclude that the delay in filing the petition from the time above-named counsel became responsible for the application in September, 2007 until the filing of the present application on 05 February 2007 was unintentional. However, it is not sufficient to support a conclusion that the delay during the period between the expiration of the thirty month date and above-named counsel's acceptance of responsibility herein in September 2007, a period during which the application was being handled by separate counsel, was also unintentional.

Before it can be concluded that the entire delay herein was unintentional, applicant must provide additional materials confirming that the delay in filing the required reply between the the expiration of the thirty month date and above-named counsel's acceptance of responsibility herein in September 2007 was unintentional. Such materials should include a statement from prior counsel explaining the delay during this period, since such person(s) would presumably have firsthand knowledge regarding the cause of delay during this time period.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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